

Article 16.

Cultivation of Shellfish.

§ 113-201. Legislative findings and declaration of policy; authority of Marine Fisheries Commission.

(a) The General Assembly finds that shellfish cultivation provides increased seafood production and long-term economic and employment opportunities. The General Assembly also finds that shellfish cultivation provides increased ecological benefits to the estuarine environment by promoting natural water filtration and increased fishery habitats. The General Assembly declares that it is the policy of the State to encourage the development of private, commercial shellfish cultivation in ways that are compatible with other public uses of marine and estuarine resources such as navigation, fishing, and recreation.

(b) The Marine Fisheries Commission is empowered to make rules and take all steps necessary to develop and improve the cultivation, harvesting, and marketing of shellfish in North Carolina both from public grounds and private beds. In order to assure the public that some waters will remain open and free from shellfish cultivation activities, the Marine Fisheries Commission may limit the number of acres in any area that may be granted as shellfish cultivation leases.

(c) The Marine Fisheries Commission shall adopt rules to establish training requirements for persons applying for new shellfish cultivation leases and for persons acquiring shellfish cultivation leases by lawful transfer. These training requirements shall be designed to encourage the productive use of shellfish cultivation leases. Training requirements established pursuant to this subsection shall not apply to either:

- (1) An applicant who applies for a new shellfish cultivation lease if, at the time of the application, the applicant holds one or more shellfish cultivation leases and all of the leases meet the shellfish production requirements established by the Marine Fisheries Commission.
- (2) A person who receives a shellfish cultivation lease by lawful transfer if, at the time of the transfer, the person holds one or more shellfish cultivation leases and all of the leases meet the shellfish production requirements established by the Marine Fisheries Commission. (1921, c. 132, s. 1; C.S., s. 1959(a); 1965, c. 957, s. 2; 1973, c. 1262, s. 28; 1983, c. 621, s. 2; 1987, c. 827, s. 98; 2004-150, s. 1; 2009-433, s. 3.)

§ 113-201.1. Definitions.

As used in this Article:

- (1) "Natural shellfish bed" means an area of public bottom where oysters, clams, scallops, mussels or other shellfish are found to be growing in sufficient quantities to be valuable to the public.
- (2) "Riparian owner" means the holder(s) of the fee title to land that is bordered by waters of an arm of the sea or any other navigable body of water.
- (3) "Shellfish" means oysters, clams, scallops, mussels or any other species of mollusks that the Marine Fisheries Commission determines suitable for cultivation, harvesting, and marketing from public grounds and private beds.

- (4) "Single family unit" means the husband and wife and any unemancipated children in the household.
- (5) "Water column" means the vertical extent of water, including the surface, above a designated area of submerged bottom land. (1983, c. 621, s. 3; 1987, c. 641, s. 15; 2015-241, s. 14.10C(a).)

§ 113-202. New and renewal leases for shellfish cultivation; termination of leases issued prior to January 1, 1966.

(a) To increase the use of suitable areas underlying coastal fishing waters for the production of shellfish, the Secretary may grant shellfish cultivation leases to persons who reside in North Carolina under the terms of this section when the Secretary determines, in accordance with his duty to conserve the marine and estuarine resources of the State, that the public interest will benefit from issuance of the lease. Suitable areas for the production of shellfish shall meet the following minimum standards:

- (1) The area leased must be suitable for the cultivation and harvesting of shellfish in commercial quantities.
- (2) The area leased must not contain a natural shellfish bed.
- (3) Cultivation of shellfish in the leased area will be compatible with lawful utilization by the public of other marine and estuarine resources. Other public uses which may be considered include, but are not limited to, navigation, fishing and recreation.
- (4) Cultivation of shellfish in the leased area will not impinge upon the rights of riparian owners.
- (5) The area leased must not include an area designated for inclusion in the Department's Shellfish Management Program.
- (6) The area leased must not include an area which the State Health Director has recommended be closed to shellfish harvest by reason of pollution.

(b) The Secretary may delete any part of an area proposed for lease or may condition a lease to protect the public interest with respect to the factors enumerated in subsection (a) of this section. The Secretary may not grant a new lease in an area heavily used for recreational purposes. Except as prohibited by federal law, the Secretary shall not exclude any area from leasing solely on the basis that the area contains submerged aquatic vegetation and shall make specific findings based on the standards set forth in subsection (a) of this section prior to reaching a decision not to grant or renew a lease for shellfish cultivation for any area containing submerged aquatic vegetation.

(c) No person, including a corporate entity, or single family unit may acquire and hold by lease, lease renewal, or purchase more than 50 acres of public bottoms under shellfish cultivation leases. For purposes of this subsection, the number of acres of leases held by a person includes acres held by a corporation in which the person holds an interest. The Marine Fisheries Commission may adopt rules to require the submission of information necessary to ensure compliance with this subsection.

(d) Any person desiring to apply for a lease must make written application to the Secretary on forms prepared by the Department containing such information as deemed

necessary to determine the desirability of granting or not granting the lease requested. Except in the case of renewal leases, the application must be accompanied by a map or diagram made at the expense of the applicant, showing the area proposed to be leased.

(d1) The map or diagram must conform to standards prescribed by the Secretary concerning accuracy of map or diagram and the amount of detail that must be shown. If on the basis of the application information and map or diagram the Secretary deems that granting the lease would benefit the shellfish culture of North Carolina, the Secretary, in the case of initial lease applications, must order an investigation of the bottom proposed to be leased. The investigation is to be made by the Secretary or his authorized agent to determine whether the area proposed to be leased is consistent with the standards in subsection (a) of this section and any other applicable standards under this Article and the rules of the Marine Fisheries Commission. In the event the Secretary finds the application inconsistent with the applicable standards, the Secretary shall deny the application or propose that a conditional lease be issued that is consistent with the applicable standards. In the event the Secretary authorizes amendment of the application, the applicant must furnish a new map or diagram meeting requisite standards showing the area proposed to be leased under the amended application. At the time of making application for an initial lease, the applicant must pay a filing fee of two hundred dollars (\$200.00).

(e) The area of bottom applied for in the case of an initial lease or amended initial lease must be as compact as possible, taking into consideration the shape of the body of water, the consistency of the bottom, and the desirability of separating the boundaries of a leasehold by a sufficient distance from any known natural shellfish bed to prevent the likelihood of disputes arising between the leaseholder and members of the public taking shellfish from the natural bed.

(f) Within a reasonable time after receipt of an application that complies with subsection (d), the Secretary shall notify the applicant of the intended action on the lease application. If the intended action is approval of the application as submitted or approval with a modification to which the applicant agrees, the Secretary shall conduct a public hearing in the county where the proposed leasehold lies. The Secretary must publish at least two notices of the intention to lease in a newspaper of general circulation in the county in which the proposed leasehold lies. The first publication must precede the public hearing by more than 20 days; the second publication must follow the first by seven to 11 days. The notice of intention to lease must contain a sufficient description of the area of the proposed leasehold that its boundaries may be established with reasonable ease and certainty and must also contain the date, hour and place of the hearing.

(g) After consideration of the public comment received and any additional investigations the Secretary orders to evaluate the comments, the Secretary shall notify the applicant in person or by certified or registered mail of the decision on the lease application. The Secretary shall also notify persons who submitted comments at the public hearing and requested notice of the lease decision. An applicant who is dissatisfied with the Secretary's decision or another person aggrieved by the decision may commence a contested case by filing a petition under G.S. 150B-23 within 20 days after receiving notice of the Secretary's decision. In the event the Secretary's decision is a modification to which the applicant

agrees, the lease applicant must furnish an amended map or diagram before the lease can be issued by the Secretary.

(h) Repealed by Session Laws 1993, c. 466, s. 1.

(i) After a lease application is approved by the Secretary, the applicant shall submit to the Secretary information sufficient to define the bounds of the area approved for leasing with markers in accordance with the rules of the Commission. The information shall conform to standards prescribed by the Secretary concerning accuracy and the amount of detail to be shown. When information is submitted, the boundaries are marked and all fees and rents due in advance are paid, the Secretary shall execute the lease on forms approved by the Attorney General. The Secretary is authorized, with the approval of the lessee, to amend an existing lease by reducing the area under lease or by combining contiguous leases without increasing the total area leased. The information required by this subsection may be based on coordinate information produced using a device equipped to receive global positioning system data.

(j) Initial leases begin upon the issuance of the lease by the Secretary and expire at noon on the first day of July following the tenth anniversary of the granting of the lease. Renewal leases are issued for a period of 10 years from the time of expiration of the previous lease. At the time of making application for renewal of a lease, the applicant must pay a filing fee of one hundred dollars (\$100.00). The rental for initial leases is one dollar (\$1.00) per acre until noon on the first day of July following the first anniversary of the lease. Thereafter, for initial leases and from the beginning for renewals of leases entered into after that date, the rental is ten dollars (\$10.00) per acre per year. Rental must be paid annually in advance prior to the first day of July each year. Upon initial granting of a lease, the pro rata amount for the portion of the year left until the first day of July must be paid in advance at the rate of one dollar (\$1.00) per acre per year; then, on or before the first day of July next, the lessee must pay the rental for the next full year.

(k) Except as restricted by this Subchapter, leaseholds granted under this section are to be treated as if they were real property and are subject to all laws relating to taxation, sale, devise, inheritance, gift, seizure and sale under execution or other legal process, and the like. Leases properly acknowledged and probated are eligible for recordation in the same manner as instruments conveying an estate in real property. Within 30 days after transfer of beneficial ownership of all or any portion of or interest in a leasehold to another, the new owner must notify the Secretary of such fact. Such transfer is not valid until notice is furnished the Secretary. In the event such transferee is a nonresident, the Secretary must initiate proceedings to terminate the lease.

(l) Upon receipt of notice by the Secretary of any of the following occurrences, he must commence action to terminate the leasehold:

- (1) Failure to pay the annual rent in advance.
- (2) Failure to file information required by the Secretary upon annual remittance of rental or filing false information on the form required to accompany the annual remittance of rental.
- (3) Failure by new owner to report a transfer of beneficial ownership of all or any portion of or interest in the leasehold.

- (4) Failure to mark the boundaries in the leasehold and to keep them marked as required in the rules of the Marine Fisheries Commission.
- (5) Failure to utilize the leasehold on a continuing basis for the commercial production of shellfish.
- (6) Transfer of all or part of the beneficial ownership of a leasehold to a nonresident.
- (7) Substantial breach of compliance with the provisions of this Article or of rules of the Marine Fisheries Commission governing use of the leasehold.
- (8) Failure to comply with the training requirements established by the Marine Fisheries Commission pursuant to G.S. 113-201(c).

(11) The Marine Fisheries Commission is authorized to make rules defining commercial production of shellfish, based upon the productive potential of particular areas climatic or biological conditions at particular areas or particular times, availability of seed shellfish, availability for purchase by lessees of shells or other material to which oyster spat may attach, and the like. Commercial production may be defined in terms of planting effort made as well as in terms of quantities of shellfish harvested. Provided, however, that if a lessee has made a diligent effort to effectively and efficiently manage his lease according to accepted standards and practices in such management, and because of reasons beyond his control, such as acts of God, such lessee has not and cannot meet the requirements set out by the Marine Fisheries Commission under the provisions of this subsection, his leasehold shall not be terminated under subdivision (5) of subsection (1) of this section.

(m) In the event the leaseholder takes steps within 30 days to remedy the situation upon which the notice of intention to terminate was based and the Secretary is satisfied that continuation of the lease is in the best interests of the shellfish culture of the State, the Secretary may discontinue termination procedures. Where there is no discontinuance of termination procedures, the leaseholder may initiate a contested case by filing a petition under G.S. 150B-23 within 30 days of receipt of notice of intention to terminate. Where the leaseholder does not initiate a contested case, or the final decision upholds termination, the Secretary must send a final letter of termination to the leaseholder. The final letter of termination may not be mailed sooner than 30 days after receipt by the leaseholder of the Secretary's notice of intention to terminate, or of the final agency decision, as appropriate. The lease is terminated effective at midnight on the day the final notice of termination is served on the leaseholder. The final notice of termination may not be issued pending hearing of a contested case initiated by the leaseholder.

Service of any notice required in this subsection may be accomplished by certified mail, return receipt requested; personal service by any law-enforcement officer; or upon the failure of these two methods, publication. Service by publication shall be accomplished by publishing such notices in a newspaper of general circulation within the county where the lease is located for at least once a week for three successive weeks. The format for notice by publication shall be approved by the Attorney General.

(n) Upon final termination of any leasehold, the bottom in question is thrown open to the public for use in accordance with laws and rules governing use of public grounds

generally. Within 30 days of final termination of the leasehold, the former leaseholder shall remove all abandoned markers denominating the area of the leasehold as a private bottom. The State may, after 10 days' notice to the owner of the abandoned markers thereof, remove the abandoned structure and have the area cleaned up. The cost of such removal and cleanup shall be payable by the owner of the abandoned markers and the State may bring suit to recover the costs thereof.

(o) Every year between January 1 and February 15 the Secretary must mail to all leaseholders a notice of the annual rental due and include forms designed by him for determining the amount of shellfish or shells planted on the leasehold during the preceding calendar year, and the amount of harvest gathered. Such forms may contain other pertinent questions relating to the utilization of the leasehold in the best interests of the shellfish culture of the State, and must be executed and returned by the leaseholder with the payment of his rental. Any leaseholder or his agent executing such forms for him who knowingly makes a false statement on such forms is guilty of a Class 1 misdemeanor.

(p) All leases and renewal leases granted after the effective date of this Article are made subject to this Article and to reasonable amendment of governing statutes, rules of the Marine Fisheries Commission, and requirements imposed by the Secretary or his agents in regulating the use of the leasehold or in processing applications of rentals. This includes such statutory increase in rentals as may be necessitated by changing conditions and refusal to renew lease after expiration, in the discretion of the Secretary. No increase in rentals, however, may be given retroactive effect.

The General Assembly declares it to be contrary to public policy to the oyster and clam bottoms which were leased prior to January 1, 1966, and which are not being used to produce oysters and clams in commercial quantities to continue to be held by private individuals, thus depriving the public of a resource which belongs to all the people of the State. Therefore, when the Secretary determines, after due notice to the lessee, and after opportunity for the lessee to be heard, that oysters or clams are not being produced in commercial quantities, due to the lessee's failure to make diligent effort to produce oysters and clams in commercial quantities, the Secretary may decline to renew, at the end of the current term, any oyster or clam bottom lease which was executed prior to January 1, 1966. The lessee may appeal the denial of the Secretary to renew the lease by initiating a contested case pursuant to G.S. 150B-23. In such contested cases, the burden of proof, by the greater weight of the evidence, shall be on the lessee.

(q) Repealed by Session Laws 1983, c. 621, s. 16.

(r) A lease under this section shall include the right to place devices or equipment related to the cultivation or harvesting of marine resources on or within 18 inches of the leased bottom. Devices or equipment not resting on the bottom or extending more than 18 inches above the bottom will require a water column lease under G.S. 113-202.1. (1893, c. 287, s. 1; Rev., s. 2371; 1909, c. 871, ss. 1-9; 1919, c. 333, s. 6; C.S., ss. 1902-1911; Ex. Sess. 1921, c. 46, s. 1; 1933, c. 346; 1953, cc. 842, 1139; 1963, c. 1260, ss. 1-3; 1965, c. 957, s. 2; 1967, c. 24, s. 16; c. 88; c. 876, s. 1; 1971, c. 447; 1973, c. 476, s. 128; c. 1262, ss. 28, 86; 1983, c. 601, ss. 1-3; c. 621, ss. 4-16; 1985, c. 275, ss. 1-3; 1987, c. 641, s. 16; c. 773, s. 11; c. 827, s. 98; 1989, c. 423, s. 2; c. 727, s. 99; 1991 (Reg. Sess., 1992), c. 788,

s. 2; 1993, c. 466, s. 1; c. 539, s. 840; 1994, Ex. Sess., c. 24, s. 14(c); 2004-150, ss. 2, 3, 4; 2009-433, ss. 4, 5; 2011-398, s. 35; 2015-241, ss. 14.10(a), (b), 14.10C(b); 2015-263, s. 11(a); 2016-94, s. 14.11(a).)

§ 113-202.1. Water column leases for aquaculture.

(a) To increase the productivity of leases for shellfish culture issued under G.S. 113-202, the Secretary may amend shellfish cultivation leases to authorize use of the water column superjacent to the leased bottom under the terms of this section when he determines the public interest will benefit from amendment of the leases. Leases with water column amendments must produce shellfish in commercial quantities at four times the minimum production rate of leases issued under G.S. 113-202, or any higher quantity required by the Marine Fisheries Commission through duly adopted rules.

(b) Suitable areas for the authorization of water column use shall meet the following minimum standards:

- (1) Aquaculture use of the leased area must not significantly impair navigation;
- (2) The leased area must not be within a navigation channel marked or maintained by a state or federal agency;
- (3) The leased area must not be within an area traditionally used and available for fishing or hunting activities incompatible with the activities proposed by the leaseholder, such as trawling or seining;
- (4) Aquaculture use of the leased area must not significantly interfere with the exercise of riparian rights by adjacent property owners including access to navigation channels from piers or other means of access; and
- (5) Any additional standards, established by the Commission in duly adopted rules, to protect the public interest in coastal fishing waters.

(c) The Secretary shall not amend shellfish cultivation leases to authorize uses of the water column involving devices or equipment not resting on the bottom or that extend more than 18 inches above the bottom unless:

- (1) The leaseholder submits an application, accompanied by a nonrefundable application fee of one hundred dollars (\$100.00), which conforms to the standards for lease applications in G.S. 113-202(d) and the duly adopted rules of the Commission;
- (2) The proposed amendment has been noticed consistent with G.S. 113-202(f);
- (3) Public hearings have been conducted consistent with G.S. 113-202(g);
- (4) The aspects of the proposals which require use and dedication of the water column have been documented and are recognized by the Secretary as commercially feasible forms of aquaculture which will enhance shellfish production on the leased area;
- (5) It is not feasible to undertake the aquaculture activity outside of coastal fishing waters; and

(6) The authorized water column use has the least disruptive effect on other public trust uses of the waters of any available technology to produce the shellfish identified in the proposal.

(d) Amendments of shellfish cultivation leases to authorize use of the water column are issued for a period of 10 years or the remainder of the term of the lease, whichever is shorter. The annual rental for a new or renewal water column amendment is one hundred dollars (\$100.00) an acre. If a water column amendment is issued for less than a 12-month period, the rental shall be prorated based on the number of months remaining in the year. The annual rental for an amendment is payable at the beginning of the year. The rental is in addition to that required in G.S. 113-202.

(e) Amendments of shellfish cultivation leases to authorize use of the water column are subject to termination in accordance with the procedures established in G.S. 113-202 for the termination of shellfish cultivation leases. Additionally, such amendments may be terminated for unauthorized or unlawful interference with the exercise of public trust rights by the leaseholder, agents and employees of the leaseholder.

(f) Amendments of shellfish cultivation leases to authorize use of the water column may be transferred only with the superincumbent bottom lease for the remainder of the term of the amendment at the same rental rate and term as set forth in subsection (d) of this section and so long as notice of the transfer is provided to the Secretary as required by G.S. 113-202(k).

(g) After public notice and hearing consistent with subsection (c) of this section, the Secretary may renew an amendment, in whole or in part, when the leaseholder has produced commercial quantities of shellfish and has otherwise complied with the rules of the Commission. Renewals may be denied or reduced in scope when the public interest so requires. Appeal of renewal decisions shall be conducted in accordance with G.S. 113-202(p). Renewals are subject to the lease terms and rates established in subsection (d) of this section.

(h) The procedures and requirements of G.S. 113-202 shall apply to proposed amendments or amendments of shellfish cultivation leases considered under this section except more specific provisions of this section control conflicts between the two sections.

(i) To the extent required by demonstration or research aquaculture development projects, the Secretary may amend existing leases and issue leases that authorize use of the bottom and the water column. Demonstration or research aquaculture development projects may be authorized for five years with no more than one renewal and when the project is proposed or formally sponsored by an educational institution which conducts research or demonstration of aquaculture. Production of shellfish with a sales value in excess of five thousand dollars (\$5,000) per acre per year shall constitute commercial production. Demonstration or research aquaculture development projects shall be exempt for the rental rate in subsection (d) of this section unless commercial production occurs as a result of the project. (1989, c. 423, s. 1; 1989 (Reg. Sess., 1990), c. 1004, s. 4; c. 1024, s. 22; 1993, c. 322, s. 1; c. 466, s. 2; 2004-150, s. 5; 2015-241, s. 14.10C(c); 2015-268, s. 5.6; 2016-94, s. 14.11(b); 2016-123, s. 6.1(a); 2017-102, s. 33.4(a).)

§ 113-202.2. Water column leases for aquaculture for perpetual franchises.

(a) To increase the productivity of shellfish grants and perpetual franchises for shellfish culture recognized under G.S. 113-206, the Secretary may lease the water column superjacent to such grants or perpetual franchises (hereinafter "perpetual franchises") under the terms of this section when it determines the public interest will benefit from the lease. Perpetual franchises with water column leases must produce shellfish in commercial quantities at four times the minimum production rate of leases issued under G.S. 113-202, or any higher quantity required by the Marine Fisheries Commission by rule.

(b) Suitable areas for the authorization of water column use shall meet the following minimum standards:

- (1) Aquaculture use of the leased water column area must not significantly impair navigation;
- (2) The leased water column area must not be within a navigation channel marked or maintained by a State or federal agency;
- (3) The leased water column area must not be within an area traditionally used and available for fishing or hunting activities incompatible with the activities proposed by the perpetual franchise holder, such as trawling or seining;
- (4) Aquaculture use of the leased water column area must not significantly interfere with the exercise of riparian rights by adjacent property owners including access to navigation channels from piers or other means of access;
- (5) The leased water column area may not exceed 10 acres for grants or perpetual franchises recognized pursuant to G.S. 113-206;
- (6) The leased water column area must not extend more than one-third of the distance across any body of water or into the channel third of any body of water for grants or perpetual franchises recognized pursuant to G.S. 113-206; and
- (7) Any additional rules to protect the public interest in coastal fishing waters adopted by the Commission.

(c) The Secretary shall not lease the water column superjacent to oyster or other shellfish grants or perpetual franchises unless:

- (1) The perpetual franchise holder submits an application, accompanied by a nonrefundable application fee of one hundred dollars (\$100.00), which conforms to the standards for lease applications in G.S. 113-202(d) and rules adopted by the Commission;
- (2) Notice of the proposed lease has been given consistent with G.S. 113-202(f);
- (3) Public hearings have been conducted consistent with G.S. 113-202(g);
- (4) The aspects of the proposals which require use and dedication of the water column have been documented and are recognized by the Secretary as commercially feasible forms of aquaculture which will enhance shellfish production;

- (5) It is not feasible to undertake the aquaculture activity outside of coastal fishing waters; and
- (6) The authorized water column use has the least disruptive effect on other public trust uses of the waters of any available technology to produce the shellfish identified in the proposal.

(d) Water column leases to perpetual franchises shall be issued for a period of 10 years and may be renewed pursuant to subsection (g) of this section. The rental for an initial water column lease issued under this section is the same as the rental set in G.S. 113-202.1 for an initial water column amendment issued under that section, and the rental for a renewed water column lease issued under this section is the same as the rental set in G.S. 113-202.1 for a renewed water column amendment issued under that section.

(e) Water column leases to perpetual franchises may be terminated for unauthorized or unlawful interference with the exercise of public trust rights by the leaseholder or his agents or employees.

(f) Water column leases to perpetual franchises may be transferred only with the superincumbent perpetual franchise for the remainder of the term of the lease at the same rental rate and term as set forth in subsection (d) of this section and so long as notice of the transfer is provided to the Secretary as required by G.S. 113-202(k).

(g) After public notice and hearing consistent with G.S. 113-202(f) and (g), the Secretary may renew a water column lease, in whole or in part, if the leaseholder has produced commercial quantities of shellfish and has otherwise complied with this section and the rules of the Commission. Renewals may be denied or reduced in scope when the public interest so requires. Appeal of renewal decisions shall be conducted in accordance with G.S. 113-202(p). Renewals are subject to the lease terms and rates set out in subsection (d) of this section.

(h) The procedures and requirements of G.S. 113-202 shall apply to proposed water column leases or water column leases to perpetual franchises considered under this section except that more specific provisions of this section control conflicts between the two sections.

(i) Demonstration or research aquaculture development projects may be authorized for five years with no more than one renewal and when the project is proposed or formally sponsored by an educational institution which conducts aquaculture research or demonstration projects. Production of shellfish with a sales value in excess of five thousand dollars (\$5,000) per acre per year shall constitute commercial production. Demonstration or research aquaculture development projects shall be exempt from the rental rate in subsection (d) of this section unless commercial production occurs as a result of the project. (1989 (Reg. Sess., 1990), c. 958, s. 1; 1993, c. 322, s. 2; c. 466, s. 3; 2016-94, s. 14.11(c); 2016-123, s. 6.1(b); 2017-102, s. 33.4(b).)

§ 113-203. Transplanting of oysters and clams.

(a) Repealed by Session Laws 2009-433, s. 6, effective August 7, 2009 (subdivision (a)(2)), and by Session Laws 2014-120, s. 26, effective September 18, 2014 (remainder of subsection (a)).

(a1) Repealed by Session Laws 2014-120, s. 26, effective September 18, 2014.

(a2) It is unlawful to do any of the following:

- (1) Transplant oysters or clams taken from public grounds to private beds except when lawfully taken during open season and transported directly to a private bed in accordance with rules of the Marine Fisheries Commission.
- (2) Transplant oysters or clams taken from permitted aquaculture operations to private beds except from waters in the approved classification.
- (3) Transplant oysters or clams from public grounds or permitted aquaculture operations utilizing waters in the restricted or conditionally approved classification to private beds except when the transplanting is done in accordance with the provisions of this section and implementing rules.

(a3) It is lawful to transplant seed oysters or seed clams taken from permitted aquaculture operations that use waters in the restricted or conditionally approved classification to private beds pursuant to an Aquaculture Seed Transplant Permit issued by the Secretary that sets times during which transplant is permissible and other reasonable restrictions imposed by the Secretary under either of the following circumstances:

- (1) When transplanting seed clams less than 12 millimeters in their largest dimension.
- (2) When transplanting seed oysters less than 25 millimeters in their largest dimension.

(a4) It is unlawful to conduct a seed transplanting operation pursuant to subsection (a3) of this section if the seed transplanting operation is not conducted in compliance with its Aquaculture Seed Transplant Permit.

(b) It is lawful to transplant from public bottoms to private beds oysters or clams taken from waters in the restricted or conditionally approved classifications with a permit from the Secretary setting out the waters from which the oysters or clams may be taken, the quantities which may be taken, the times during which the taking is permissible, and other reasonable restrictions imposed by the Secretary for the regulation of transplanting operations. Any transplanting operation which does not substantially comply with the restrictions of the permit issued is unlawful.

(c) Repealed by Session Laws 2009-433, s. 6, effective August 7, 2009.

(d) It is lawful to transplant to private beds in North Carolina oysters taken from natural or managed public beds designated by the Marine Fisheries Commission as seed oyster management areas. The Secretary shall issue permits to all qualified individuals who are residents of North Carolina without regard to county of residence to transplant seed oysters from said designated seed oyster management areas, setting out the quantity which may be taken, the times which the taking is permissible and other reasonable restrictions imposed to aid the Secretary in the Secretary's duty of regulating such transplanting operations. Persons taking such seed oysters may, in the discretion of the Marine Fisheries Commission, be required to pay to the Department for oysters taken an amount to reimburse the Department in full or in part for the costs of seed oyster management

operations. Any transplanting operation which does not substantially comply with the restrictions of the permit issued is unlawful.

(e) The Marine Fisheries Commission may implement the provisions of this section by rules governing sale, possession, transportation, storage, handling, planting, and harvesting of oysters and clams and setting out any system of marking oysters and clams or of permits or receipts relating to them generally, from both public and private beds, as necessary to regulate the lawful transplanting of seed oysters and oysters or clams taken from or placed on public or private beds.

(f) The Commission may establish a fee for each permit established pursuant to this subsection in an amount that compensates the Division for the administrative costs associated with the permit but that does not exceed one hundred dollars (\$100.00) per permit.

(g) Advance Sale of Permits; Permit Revenue. – To ensure an orderly transition from one permit year to the next, the Division may issue a permit prior to July 1 of the permit year for which the permit is valid. Revenue that the Division receives for the issuance of a permit prior to the beginning of a permit year shall not revert at the end of the fiscal year in which the revenue is received and shall be credited and available to the Division for the permit year in which the permit is valid. (1921, c. 132, s. 2; C.S., s. 1959(b); 1961, c. 1189, s. 1; 1965, c. 957, s. 2; 1967, c. 878; 1973, c. 1262, s. 28; 1977, c. 771, s. 4; 1987, c. 641, s. 6; c. 827, s. 98; 1989, c. 727, s. 100; 1997-400, s. 5.7; 2007-495, s. 3; 2009-433, s. 6; 2013-360, s. 14.8(s); 2014-120, s. 26.)

§ 113-204. Propagation of shellfish.

The Department is authorized to close areas of public bottoms under coastal fishing waters for such time as may be necessary in any program of propagation of shellfish. The Department is authorized to expend State funds planting such areas and to manage them in ways beneficial to the overall productivity of the shellfish industry in North Carolina. The Department in its discretion in accordance with desirable conservation objectives may make shellfish produced by it available to commercial fishermen generally, to those in possession of private shellfish beds, or to selected individuals cooperating with the Department in demonstration projects concerned with the cultivation, harvesting, or processing of shellfish. (1921, c. 132, s. 1; C.S., s. 1959(a); 1961, c. 1189, s. 1; 1965, c. 957, s. 2; 1973, c. 1262, s. 28; 1977, c. 771, s. 4; 1989, c. 727, s. 101.)

§ 113-205. Registration of grants in navigable waters; exercise of private fishery rights.

(a) Every person claiming to any part of the bed lying under navigable waters of any coastal county of North Carolina or any right of fishery in navigable waters of any coastal county superior to that of the general public must register the grant, charter, or other authorization under which he claims with the Secretary. Such registration must be accompanied by a survey of the claimed area, meeting criteria established by the Secretary for surveys of oyster and clam leases. All rights and titles not registered in accordance with this section on or before January 1, 1970, are hereby declared null and void. The Secretary must give notice of this section at least once each calendar year for three years by publication in a newspaper or newspapers of general circulation throughout all coastal counties of the State. For the purpose of this subsection, "coastal county" shall mean all the following counties: Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Currituck, Dare, Gates, Halifax, Hertford, Hyde, Martin, New

Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington. The provisions of this section shall not apply to the land lying under any private fish pond or irrigation pond.

(b) The Marine Fisheries Commission may make reasonable rules governing utilization of private fisheries and may require grantees or others with private rights to mark their fishery areas or private beds in navigable waters as a precondition to the right of excluding the public from exercising the private rights claimed to be secured to them. Nothing in this section is to be deemed to confer upon any grantee or other person with private rights the power to impede navigation upon or hinder any other appropriate use of the surface of navigable waters of North Carolina. (1965, c. 957, s. 2; 1971, c. 346, s. 1; 1973, c. 1262, s. 28; 1987, c. 827, s. 98.)

§ 113-206. Chart of grants, leases and fishery rights; overlapping leases and rights; contest or condemnation of claims; damages for taking of property.

(a) The Secretary must commence to prepare as expeditiously as possible charts of the waters of North Carolina containing the locations of all oyster and clam leaseholds made by the Department under the provisions of this Article and of all existing leaseholds as they are renewed under the provisions of this Article, the locations of all claims of grant of title to portions of the bed under navigable waters registered with him, and the locations of all areas in navigable waters to which a right of private fishery is claimed and registered with him. Charting or registering any claim by the Secretary in no way implies recognition by the State of the validity of the claim.

(a1) If a claim is based on an oyster or other shellfish grantor a perpetual franchise for shellfish cultivation, the Secretary may, to resolve the claim, grant a shellfish lease to the claimant for part or all of the area claimed. If a claim of exclusive shellfishing rights was registered based upon a conveyance by the Literary Fund, the North Carolina Literary Board or the State Board of Education, and the claimant shows that the area had been cultivated by the claimant or his predecessor in title for the seven-year period prior to registration of the claim, the Secretary may, to resolve the claim, grant a shellfish lease to the claimant for all or part of the area claimed, not to exceed ten acres. A shellfish lease granted under this subsection is subject to the restrictions imposed on shellfish leases in G.S. 113-202, except the prohibition against leasing an area that contains a natural shellfish bed in G.S. 113-202(a)(2). This restriction is waived because, due to the cultivation efforts of the claimant, the area is likely to contain a natural shellfish bed.

(b) In the event of any overlapping of areas leased by the Department, the Secretary shall recommend modification of the areas leased as he deems equitable to all parties. Appeal from the recommendation of the Secretary lies for either party in the same manner as for a lease applicant as to which there is a recommendation of denial or modification of lease. If there is no appeal, or upon settlement of the issue upon appeal, the modified leases must be approved by the Marine Fisheries Commission and reissued by the Secretary in the same manner as initial or renewal leases. Leaseholders must furnish the Secretary surveys of the modified leasehold areas, meeting the requisite criteria for surveys established by the Secretary.

(c) In the event of any overlapping of areas leased by the Department and of areas in which title or conflicting private right of fishery is claimed and registered under the provisions of this Article, the Secretary must give preference to the leaseholder engaged in the production of oysters or clams in commercial quantities who received the lease with no notice of the existence of any claimed grant or right of fishery. To this end, the Secretary shall cause a modification of the claim registered with him and its accompanying survey to exclude the leasehold area. Such modification

effected by the Secretary has the effect of voiding the grant of title or right of fishing to the extent indicated.

(d) In the interest of conservation of the marine and estuarine resources of North Carolina, the Department may institute an action in the superior court to contest the claim of title or claimed right of fishery in any navigable waters of North Carolina registered with the Secretary. In such proceeding, the burden of showing title or right of fishery, by the preponderance of the evidence, shall be upon the claiming title or right holder. In the event the claiming title or right holder prevails, the trier of fact shall fix the monetary worth of the claim. The Department may elect to condemn the claim upon payment of the established owners or right holders their pro rata shares of the amount so fixed. The Department may make such payments from such funds as may be available to it. An appeal lies to the appellate division by either party both as to the validity of the claim and as to the fairness of the amount fixed. The Department in such actions may be represented by the Attorney General. In determining the availability of funds to the Department to underwrite the costs of litigation or make condemnation payments, the use which the Department proposes to make of the area in question may be considered; such payments are to be deemed necessary expenses in the course of operations attending such use or of developing or attempting to develop the area in the proposed manner.

(e) A person who claims that the application of G.S. 113-205 or this section has deprived him of his private property rights in land under navigable waters or his right of fishery in navigable waters without just compensation may file a complaint in the superior court of the county in which the property is located to contest the application of G.S. 113-205 or this section. If the plaintiff prevails, the trier of fact shall fix the monetary worth of the claim, and the Department may condemn the claim upon payment of this amount to him if the Secretary considers condemnation appropriate and necessary to conserve the marine and estuarine resources of the State. The Department may pay for a condemned claim from available funds. An action under this subsection is considered a condemnation action and is therefore subject to G.S. 7A-248.

The limitation period for an action brought under this subsection is three years. This period is tolled during the disability of the plaintiff. No action, however, may be instituted under this subsection after December 31, 2006.

(f) In evaluating claims registered pursuant to G.S. 113-205, the Secretary shall favor public ownership of submerged lands and public trust rights. The Secretary's action does not alter or affect in any way the rights of a claimant or the State. (1965, c. 957, s. 2; 1969, c. 44, s. 69; c. 541, s. 11; 1973, c. 1262, s. 28; 1977, c. 771, s. 4; 1985, c. 279; c. 762; 1989, c. 423, s. 3; c. 727, s. 102; 1989 (Reg. Sess., 1990), c. 869, ss. 1, 2; 1993 (Reg. Sess., 1994), c. 717, ss. 1-3; 1998-179, s. 1; 2006-79, s. 11.)

§ 113-207. Taking shellfish from certain areas forbidden; penalty.

(a), (b) Repealed by Session Laws 2009-433, s. 7, effective August 7, 2009.

(c) It is unlawful for any person to take shellfish within 150 feet of any part of a publicly owned pier beneath which the Division of Marine Fisheries has deposited cultch material.

(d) A person who violates this section is guilty of a Class 3 misdemeanor. (1977, c. 515, s. 1; c. 771, s. 4; 1989, c. 727, s. 103; 1993, c. 539, s. 841; 1994, Ex. Sess., c. 24, s. 14(c); 1999-143, s. 1; 2009-433, s. 7.)

§ 113-208. Protection of private shellfish rights.

(a) It is unlawful for any person, other than the holder of private shellfish rights, to take or attempt to take shellfish from any privately leased, franchised, or deeded shellfish bottom area without written authorization of the holder and with actual knowledge it is a private shellfish bottom area. Actual knowledge will be presumed when the shellfish are taken or attempted to be taken:

- (1) From within the confines of posted boundaries of the area as identified by signs, whether the whole or any part of the area is posted, or
- (2) When the area has been regularly posted and identified and the person knew the area to be the subject of private shellfish rights.

A violation of this section shall constitute a Class A1 misdemeanor, which may include a fine of not more than five thousand dollars (\$5,000). The written authorization shall include the lease number or deed reference, name and address of authorized person, date of issuance, and date of expiration, and it must be signed by the holder of the private shellfish right. Identification signs shall include the lease number or deed reference and the name of the holder.

(b) The prosecutor shall dismiss any case brought for a violation of this section if the defendant produces a notarized written authorization in conformance with subsection (a) which states that the defendant had permission to take oysters or clams from the leased area at the time of the alleged violation; except the prosecutor may refuse to dismiss the case if he has reason to believe that the written authorization is fraudulent. (1979, c. 537; 1987, c. 463; 1989, c. 281, s. 2; 1993, c. 539, s. 842; 1994, Ex. Sess., c. 24, s. 14(c); 1998-225, s. 3.7.)

§ 113-209. Taking polluted shellfish at night or with prior conviction forbidden; penalty.

(a) It is unlawful for any person between sunset and sunrise to willfully take or attempt to take shellfish from areas closed to harvest by statute, rule, or proclamation because of suspected pollution.

(b) It is unlawful for any person to willfully possess, sell or offer for sale shellfish taken between sunset and sunrise from areas closed to harvest by statute, rule, or proclamation because of suspected pollution.

(c) It is unlawful for any person who has been convicted of an offense under this Chapter within the preceding two years involving shellfish taken from areas closed because of suspected pollution to willfully take, attempt to take, possess, sell or offer for sale shellfish from areas closed to harvest by statute, rule, or proclamation because of suspected pollution.

(d) Any person violating any provisions of this section shall be guilty of a Class I felony which may include a fine no less than two thousand five hundred dollars (\$2,500). Upon conviction of any person for a violation of this section, the court shall order the confiscation of all weapons, equipment, vessels, vehicles, conveyances, fish, and other evidence, fruit, and instrumentalities of the offense. The confiscated property shall be disposed of in accordance with G.S. 113-137. (1989, c. 275, s. 1; 1993, c. 539, s. 1301; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 113-210. Under Dock Oyster Culture.

(a) Under Dock Oyster Culture Permit. – An Under Dock Oyster Culture Permit authorizes the holder of the permit to attach up to 90 square feet of oyster cultivation containers to a dock or pier owned by the permit holder.

(b) Application. – The owner of a dock or pier who wishes to obtain an Under Dock Oyster Culture Permit shall apply to the Director of the Division of Marine Fisheries.

(c) Issuance. – The Director of the Division of Marine Fisheries shall issue an Under Dock Oyster Culture Permit only if the Director determines all of the following:

- (1) That the dock or pier is not located in an area that the State Health Director has recommended be closed to shellfish harvest due to pollution or that has been closed to harvest by statute, rule, or proclamation due to suspected pollution.
- (2) That the owner of the dock or pier has satisfied the training requirements established by the Marine Fisheries Commission pursuant to subsection (j) of this section.
- (3) That the attachment of the oyster cultivation containers to the dock or pier will be compatible with all lawful uses by the public of other marine and estuarine resources. Other lawful public uses include, but are not limited to, navigation, fishing, and recreation.

(d) Duration. – An Under Dock Oyster Culture Permit is valid for a one-year period from the date of issuance.

(e) Renewal. – The Director of the Division of Marine Fisheries shall renew an Under Dock Oyster Culture Permit only if the Director determines the requirements of subsection (c) of this section continue to be satisfied and the holder of the permit is attempting to utilize the permit to cultivate oysters on a continuing basis.

(f) Reporting Requirements. – The holder of an Under Dock Oyster Culture Permit shall comply with the biological data sampling and survey programs of the Marine Fisheries Commission and the Division of Marine Fisheries.

(g) Posting of Signs. – The holder of an Under Dock Oyster Culture Permit shall post signs that indicate the presence of the oyster cultivation containers and that the oyster cultivation containers and their contents are private property.

(h) Sale of Oysters Prohibited. – It is unlawful for the holder of an Under Dock Oyster Culture Permit to sell oysters cultivated pursuant to the permit.

(i) Assignment and Transfer Prohibited. – An Under Dock Oyster Culture Permit is not assignable or transferable.

(j) Oyster Cultivation Training Requirements. – The Marine Fisheries Commission, in consultation with the Sea Grant College Program at The University of North Carolina, shall develop and adopt rules for the training of individuals who cultivate oysters pursuant to this section.

(k) Revocation of Permit. – If the Director of the Division of Marine Fisheries determines that the holder of an Under Dock Oyster Culture Permit has failed to comply with any provision of this section, the Director shall revoke the Permit. The owner of the dock or pier shall remove the oyster cultivation containers that were authorized by the revoked permit within 15 days of revocation.

(l) Repealed by Session Laws 2014-100, s. 14.9(h), effective July 1, 2014.

(m) Repealed by Session Laws 2014-120, s. 33(a), effective July 1, 2014. (2004-124, s. 12.7B; 2013-360, s. 14.8(t); 2014-100, s. 14.9(h); 2014-120, s. 33(a).)

§§ 113-211 through 113-220: Reserved for future codification purposes.

